PUBLIC SUBMISSION

Docket: OCC-2023-0017
Business Combinations Under the Bank Merger Act

Comment On: OCC-2023-0017-0001
Business Combinations Under the Bank Merger Act

Document: OCC-2023-0017-0008
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General Comment

Attached is a document providing public comment on the OCC's notice of proposed rulemaking concerning business combinations under the Bank Merger Act. Public comments must be received by April 15, 2024. This is for Docket ID OCC-2023-0017.

I appreciate the opportunity to comment.

Attachments

William LRJR

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Chief Counsel's Office
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Docket ID OCC - 2023-0017

Title: *Business Combinations Under the Bank Merger Act (BMA)*

This letter is in response to the Office of the Comptroller of the Currency's (OCC) invitation to comment on a proposed rule to increase the standards that apply to the agency's review of business combinations involving national banks and Federal savings associations. Written comments must be received by April 15, 2024. I appreciate the OCC's request for public comment.

The OCC must enhance the "clarity" of the information to be collected and considered in order to improve its utility for the proper performance of OCC functions.

If the OCC desires to "*increase the transparency*" of its review of business combinations to institutions and the public, it should:

a)   Televise live coverage of its deliberative committees discussing, debating and deciding on proposed business combinations.[1]
b)   Make public the last two Reports of Examination and all regulatory ratings of the acquirer and/or target institution.
c)   Inform the *public* of any request the OCC made to an applicant to withdraw its application because of shortcomings, and the nature of the shortcomings the OCC identified.

The OCC should directly address in its final rulemaking. If the OCC disagrees with the above, it should explain why it refuses to increase transparency by providing a), b) and c) above.

Appendix A - Policy Statement Regarding Statutory Factors Under the Bank Merger Act (BMA)

The OCC states the intent of Appendix A is to provide greater transparency on how the OCC reviews BMA applications and to enhance public engagement. However, Appendix A as written does the opposite. The proposed Appendix A is poorly organized and structured. This disorganization makes the text misleading and difficult for the public and bankers to understand.

For example, Appendix A, section II, suggest that the OCC will approve the transaction if all 13 indicators listed "general principles" are met. But this is not true. Take indicator #2 for example on the resulting bank having less than $50 billion in total assets. If a $32 billion national bank seeks to acquire $17 billion target bank, I assume that it would be _unlikely_ for the OCC to approve the

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[1] The OCC should broadcast and make public its key committee deliberative proceedings on bank mergers. This can be done via public broadcasting channels on cable TV, C-SPAN, or via an OCC livestream podcast and archive of footage. Public podcasts are easy and inexpensive to create and publish.

transaction if the agency believed the resulting $49 billion bank could not comply with OCC Guidelines on Heightened Standards (12 CFR 30, Appendix D) within 18 months of it growing to over $50 billion. However, the public is not informed of this. And, the public is not informed of Heightened Standards considerations until much later in the regulatory text under section III, B (Balancing Test), 3(b). And, how the OCC considers Heightened Standards is ambiguous. It would be clearer and more understandable to everyone if the OCC reorganized Appendix A so that all text on related indicators, factors and considerations appeared together in a linear description or narrative, and not a *Tarantinoesque* disordered story.[2]

Appendix A, section II, "General Principles of OCC Review" are also misleading and confusing as it provides six "examples" of indicators that raise supervisory concerns on a BMA application. First, why is the OCC offering only six "examples" of supervisory concerns and not the definitive list of supervisory concerns? Why does the OCC write, "*If certain indicators that raise supervisory or regulatory concerns are present …*" but not list all the actual indicators? What are these certain indicators? The OCC needs to improve clarity on this information to be collected and considered. I imagine the OCC considers far more negative indicators than the six simplistic examples outlined in Appendix A. Moreover, to be balanced and transparent, the OCC should **at least** enumerate 13 indicators of supervisory concern in order to be congruous with the 13 indicators listed as being consistent with the approval of applications.

Probability

The OCC states that is considers the "*probable*" effects of the proposed business combination on the community to be served. However, the OCC does not publicly define *probability* or how it calculates it. What is *probable*? Is it a 51% chance of occurrence, a 61% chance, or an 80%+ chance? Does the OCC use empirical data and historical time series to determine its probability assumptions? The agency is silent on this. Does the OCC assume discrete distributions (e.g., binomial, Poisson) or continuous distributions (e.g., exponential, Weibull) in its probability assessments? The agency is silent on this. What chance or likelihood of an event does the OCC consider *probable?* If the OCC considers probability or likelihood of impacts on the community in its decision-making, the OCC should disclose to the public its definition of *probable* and how it calculates probabilities and impacts.

Convenience and Needs

Whose convenience and needs are the OCC considering? The OCC states that it considers a variety of human value propositions, but it fails to disclose the agency's value hierarchy. For example, the OCC states that it considers job losses or reduced job opportunities from branch staffing changes. So, if a proposed business combination will reduce 100 low-paying branch positions in a city with low unemployment, but create 70 new, much higher paying positions in a low-income census tract, would the OCC view this negatively or positively? The OCC does not say. The OCC does not disclose its value hierarchy, which is a problem considering the agency's value hierarchy may be political and very different from that of the general public. The OCC also seems to believe that all, or most, branch staffing is fulfilled by people living in the local community served by the branch. However, the OCC has no empirical evidence to suggest that bank branch employees live within close proximity of the branch. Accordingly, the OCC states that it may deny a proposed business combination because of the

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[2] A reference to film director Quinton Tarantino's unique style of storytelling - e.g., "*Pulp Fiction*."

loss of bank branch jobs even though all the actual branch employees live 25+ miles away from the branch serving the local community.

Risk Assessment System (RAS)

The OCC states that it will consider the Risk Assessment System (RAS) conclusions for the combining institution and the context in which a rating or RAS assessment was assigned. However, the OCC's RAS framework has not gone through the United States Notice-and-Comment rulemaking process. The OCC also has also not provided the public with the "objective criteria" the agency uses to ensure its RAS assessments or ratings are *consistently* assigned across all national banks and Federal savings associations. The OCC should not consider its RAS assessments if its RAS assessments are arbitrary and come out of a black box.

In Summary

1. To improve clarity of the information collection, the OCC should Televise *live* coverage of its deliberative committees discussing, debating and deciding on proposed business combinations. And, it should make public the last two Reports of Examination and all regulatory ratings of the acquirer and/or target institution. And, it should inform the public of any request the OCC made to an applicant to withdraw its application because of shortcomings and the nature of the shortcomings.

2. To improve clarity of the information collection, the OCC should reorganize the text of *Appendix A* so that all text on related indicators, factors and considerations appeared together in a linear description or narrative so that readers get a comprehensive and clear understanding.

3. To improve clarity of the information collection, the OCC should not list a few simple "examples" of indicators it would consider as being negative. The OCC should provide the complete list of negative indicators. If this is not possible, the OCC should **at least** enumerate 13 indicators of supervisory concern in order to be congruous with the 13 indicators listed as being consistent with the approval of applications.

4. To improve clarity of the information collection, the OCC should define "probable" and how it determines probability and impact.

5. To improve clarity of the information collection, the OCC should disclose its value hierarchy when determining convenience and needs of a community.

6. To improve clarity of the information collection, the OCC should provide the public with the "objective criteria" the agency uses to ensure its RAS assessments or ratings are *consistently* assigned across all national banks and Federal savings associations.

I appreciate the opportunity to comment on the OCC's proposal. I wish the agency the best of luck.

Thank you. Sincerely,

William